

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

H. Andrew STRONG et al.

Application No.: 10/072,272

Filed: February 6, 2002

For: PHOTODYNAMIC THERAPY OF OCCULT
AGE-RELATED MACULAR DEGENERATION

Confirmation No.: 1974

Art Unit: 1617

Examiner: Y. S. Chong

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

A response to the Notification of Non-Compliant Appeal Brief was due on April 25, 2009, one month after the mailing date of the Notification of Non-Compliant Appeal Brief. A petition and fee for a one month extension of time accompany this response, thereby extending the deadline for response to May 25, 2009. As May 25, 2009 was a federal holiday, this response is filed on the next business day, Tuesday, May 26, 2009. Accordingly, this response is timely filed.

Because the Appeal Brief was found to be defective solely because it allegedly did not contain a concise explanation of the claimed subject matter as required by 37 C.F.R.

§41.37(c)(1)(v), Applicants are only submitting amendments to the previously-filed explanation of the claimed subject matter.

AMENDMENTS TO APPEAL BRIEF

Please replace the entirety of section 5 with the following new section 5:

--5. Summary of Claimed Subject Matter

There is only one independent claim, claim 1, from which all remaining claims on appeal depend. Dependent claims 10-12, 13 and 19 are argued separately.

Claim 1 is directed towards a photodynamic therapy (PDT) method for treating an occult choroidal neovascularity (CNV) lesion in a subject having either or both of (a) a small lesion size, or (b) poor visual acuity. A generic description of this method is found on page 5, lines 21-27.

Claim 1 is further limited to subjects having an occult CNV lesion comprising an occult component of >50% and <100% of the lesion area, corresponding to the subset of “occult lesions” that are defined as minimally classic that have an occult component, as described on page 4, lines 13-15. Such “minimally classic” lesions may also be described by reference to the percent of classic CNV, as those lesions in which the area of classic CNV occupies more than 0% but less than 50%, as described on page 2, lines 18-20.

The various features of independent claim 1 are supported by the specification as indicated below.

1. A method for treating an occult choroidal neovascular (CNV) lesion in a subject (page 5, lines 21-22) comprising

selecting a subject with an occult CNV lesion (page 5, lines 25-26) comprising an occult component of >50% and <100% of the lesion (page 2, lines 18-20) and assessed as having either

(a) a small lesion with a size less than 5 disc areas (page 5, lines 9-11), or (b) poor visual acuity of less than 65 letters prior to treatment (page 5, lines 1-5), or both (a) and (b) (page 5, line 25-26); and providing photodynamic therapy (PDT) to the subject having said CNV lesion (page 5, lines 28-30).

Small lesions are described as generally less than about 4-5 disc areas, as described on page 5, lines 9-11. Poor visual acuity means generally a best corrected vision of less than 65 letters on a modified Early Treatment Diabetic Retinopathy Study (ETDRS) chart, corresponding to visual acuity of less than about 20/50 or worse, as described in the specification at page 5, lines 3-5, with further explanation at Example 1.--

CONCLUSION

If for any reason the Examiner still believes the Appeal Brief to be non-compliant, even in view of the new section 5 provided above, Applicants request that the Examiner contact the undersigned attorney at telephone number (858) 314-7692 to discuss any steps necessary to place the Appeal Brief in compliance.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 273012012500.

Respectfully submitted,

Dated: May 26, 2009

By: / Leslie A. Robinson /
Leslie A. Robinson
Registration No.: 54,403
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
Telephone: (858) 314-7692
Facsimile: (858) 720-5125